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59 individually and on behalf of all similarly
60 situated,

61 Plaintiffs,
62 vs.
63 GOOGLE LLC,
64 Defendant.

65 Case No.: 4:20-cv-03664-YGR-SVK

66 **PLAINTIFFS' SUPPLEMENT IN
67 SUPPORT OF THEIR MOTION FOR
68 ORDER REQUIRING GOOGLE TO
69 SHOW CAUSE WHY IT SHOULD
70 NOT BE SANCTIONED FOR
71 DISCOVERY MISCONDUCT**

72 The Honorable Susan van Keulen
73 Courtroom 6 – 4th Floor
74 Date: April 21, 2022

1 **INTRODUCTION**

2 Since Plaintiffs filed their motion for an order to show cause why Google should not be
3 sanctioned (Dkt. 430), [REDACTED]

4 [REDACTED].¹ Plaintiffs' motion focused on
5 Google's [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 As confirmed in meet and confers with counsel for Google, [REDACTED]

11 [REDACTED]
12 [REDACTED] | [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED].
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

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25 ¹ Plaintiffs submit this supplement to give Google an opportunity to also address these issues as
26 part of its response to Plaintiffs' motion, due on March 30, 2022, pursuant to the parties' stipulation
27 and proposed order (Dkt. 474), and so Google may be prepared to address them at the April
evidentiary hearing.

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12 As demonstrated in their moving papers, Plaintiffs have been severely prejudiced by
13 Google's discovery misconduct. But for Google's pattern of nondisclosure, Plaintiffs could have
14 (1) sought to ensure preservation of this key data at the outset of this case, and (2) completed the
15 Special Master data productions far earlier and more efficiently. In addition, (3) Plaintiffs were
16 entitled to all of the [REDACTED]
17 and to schedule depositions based on those documents. Plaintiffs respectfully request that the
18 Court issue appropriate sanctions against Google, as Plaintiffs requested in their moving papers.

19 **SUPPLEMENTAL FACTS**

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1 [REDACTED]
2 [REDACTED] Ex. 1, GOOG-BRWN-00536949.³
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] ¶ 7.
8 [REDACTED]
9 [REDACTED] ¶ 9.
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] ¶ 10.
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] ¶ 11.
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] ¶ 13 & Ex. 2.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] See Ex. 3, Sadowski Tr. 71:8-23. [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 ³ Except where otherwise noted, all exhibit and paragraph references in this submission are to the
27 Second Declaration of Mark C. Mao in Support of Plaintiffs' Request for an Order to Show Cause,
which is filed concurrently herewith.

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Despite Plaintiffs' multiple demands and meet and confer efforts, [REDACTED]

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.⁴ ¶ 18.

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On March 11 (following the Rule 30(b)(6) deposition), [REDACTED]

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See *id.*; Dkt. 430-21.

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED] ¶ 22. [REDACTED]
4 [REDACTED] ¶ 22. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] ¶ 22.
9 [REDACTED]
10 [REDACTED] ¶ 23. [REDACTED]
11 [REDACTED] ¶ 23.
12 [REDACTED]
13 [REDACTED] ¶ 30. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 SUPPLEMENTAL ANALYSIS

18 The Court's November 12 Order was clear. Dkt. 331. Google was required to identify all
19 relevant logs and sources, i.e., "the tools to identify class members using Google's data." Dkt. 331
20 at 4. Google has not done so. And Google's refusal to comply has created enormous inefficiencies
21 and prejudiced Plaintiffs' ability to obtain and seek preservation of relevant discovery. Plaintiffs'
22 motion for an order to show cause was focused on the [REDACTED] But it now
23 appears that Google has also been [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 [REDACTED] *See* Dkt. 430-21. [REDACTED]
28

1 [REDACTED]
2 [REDACTED] ¶ 20. [REDACTED]
3 [REDACTED]
4 [REDACTED] ¶ 21. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] *See Dkt. 430-1 ¶ 19.*
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] ¶ 24.
13 [REDACTED]
14 [REDACTED] On March 8, pursuant to this Court's
15 order, Plaintiffs deposed Google employee Mandy Liu, as she is one of the employees [REDACTED]
16 [REDACTED] Ex. 4, Liu Tr. 15:2-8. [REDACTED]
17 [REDACTED]
18 [REDACTED] Ex. 4, Liu Tr. 19:24-20:8. [REDACTED]
19 [REDACTED] Ex. 4, Liu Tr. 41:23-
20 42:12. [REDACTED] ¶ 28.
21 [REDACTED] ¶ 28. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] Ex. 3, Sadowski Tr. 91:2-8.
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 ¶ 29. [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Google chose not to do so, which has severely
6 prejudiced Plaintiffs.

7 Discovery is now closed. And yet Plaintiffs still do not have answers to multiple questions:
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] Had this

14 information been fully and timely disclosed, the parties could have had an informed discussion
15 about preservation to ensure that Google did not delete relevant data. Plaintiffs have now been
16 deprived of that opportunity and data.

17 **CONCLUSION**

18 Plaintiffs respectfully request that the Court consider these issues in connection with the
19 upcoming evidentiary hearing and thereafter issue appropriate sanctions against Google.

20 Dated: March 16, 2022

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22
23 By /s/ Mark C. Mao

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